

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

James W. McCarthy

v.

Civil No. 04-cv-477-JD

Citigroup Global Markets, Inc.

O R D E R

Previously, the court ruled that the New Hampshire wage laws applied to James W. McCarthy's claims, vacated the arbitration award because of the panel's manifest disregard of the governing law, and remanded the case "to have McCarthy's claim decided under the New Hampshire wage laws through arbitration as provided by the National Association of Securities Dealers, Inc." Order, Jan. 28, 2005, at *8. McCarthy now has filed a motion to reopen the case and a separate motion to vacate the second arbitration award and for a second remand. Citigroup Global Markets, Inc., which is represented by counsel, has failed to respond to either motion.

The second arbitration award denied McCarthy's claims "in their entirety" without making any findings or providing any explanation. In a section titled "Panel's Report," the panel wrote: "The Arbitrators fully considered all claims and defenses, including the applicability of the New Hampshire Wage Laws, which were heavily argued by both sides." The panel's

statement may be open to interpretation. Based upon McCarthy's arguments in support of his motion to vacate the award and remand the case, it is at least plausible that the panel's statement means that the panel decided, once again, that the New Hampshire wage laws do not apply here, in direct contravention of this court's January 28, 2005, order. In the absence of any response from Citigroup, the court has only McCarthy's version of the arbitration proceedings to consider.

Therefore, Citigroup shall show cause **on or before October 21, 2005**, why the second arbitration award should not be vacated and the case remanded a second time for arbitration.

Conclusion

For the foregoing reasons, the plaintiff's motion to reopen (document no. 19) is granted. Citigroup is ordered to show cause **on or before October 21, 2005**, why the second arbitration award in this case should not be vacated and the case remanded a second time for arbitration.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

October 13, 2005
cc: W. Wright Danenbarger, Esquire
William A. Jacobson, Esquire
Shanna L. Pitts, Esquire
John R. Skelton, Esquire